

CITY OF AUSTIN ETHICS REVIEW COMMISSION

LANCE PETTUS

Complainant

v.

GREGORIO “GREG” CASAR

Respondent.

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Complaint No. 20141013

ORDER ON PRELIMINARY HEARING

I. PROCEDURAL HISTORY

On October 13, 2014, Lance Pettus (“Complainant”) submitted to the Austin City Clerk (“City Clerk”) a Sworn Complaint (“the Complaint”) against Gregorio “Greg” Casar. On that date, the City Clerk sent a copy of the Complaint and a notice of filing to the City Attorney, the Ethics Review Commission (“the Commission”), the Complainant, and the Respondent.

On October 16, 2014, Commission Staff Liaison and Assistant City Attorney Cynthia Tom (“Tom”) issued a Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for October 20, 2014, and advising the Respondent and Complainant of procedures for the preliminary hearing.

On October 17, 2014, Tom posted a Notice of Special Called Meeting and Agenda for the Commission for an October 20 Preliminary Hearing.



City of Austin

Ethics Review Commission

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II. FINDINGS OF FACT

A. General Findings

1. Respondent is a candidate for Austin City Council, District 4, in the City of Austin municipal election of November 4, 2014.
2. The City of Austin provides the Candidate/Officeholder Campaign Finance Report Form ("Form C/OH") to municipal candidates as part of the City's Candidate Guide.
3. Respondent submitted a Form C/OH to the City Clerk on October 6, 2014. This submission covered the period from July 1, 2014, to September 25, 2014.

B. Findings Relevant to Count I

1. The City publishes and provides to candidates a Schedule ATX 5, which is designed as an attachment to Form C/OH.
2. Schedule ATX 5 is designed to report bundled contributions.
3. Respondent filed a Schedule ATX 5 with his October 6 Form C/OH.
4. That Schedule ATX 5 reported two individual bundlers who respectively produced six contributions totaling \$2,100 and 18 contributions totaling \$5,000.
5. Complainant alleges that Respondent violated Section 2-2-22 of the Austin City Code ("Section 2-2-22") by failing to identify a bundler for seventeen contributions that Complainant alleges to have been bundled.



6. Respondent's October 6 Form C/OH reports 11 donations of \$350 each from persons who are alleged to be officers or employees of Force Multiplier Solutions, Inc. It also lists five persons with the same last name and address as a Force Multiplier officer or employee who contributed \$350. Additionally, one person with a different last name but the same address as a Force Multiplier Solutions, Inc., employee is shown as contributing \$350.
7. In all, Complainant alleges that 17 persons who are employed by Force Multiplier Solutions, Inc., or are spouses of employees of that company each contributed \$350 for a total of \$5,950.
8. The 17 contributions that are the focus of the complaint are shown as being made between September 5 and September 19, 2014, a period covered by the October 6, 2014, report.
9. Twelve of the 17 persons identified in the complaint are listed as residing in New Orleans, Louisiana, or its suburbs. The remaining five are listed as residing in either Dallas or Garland, Texas.
10. The 17 contributions alleged to be from persons associated with Force Multiplier Solutions, Inc., are not reported as bundled contributions on the Schedule ATX 5 attached to the October 6 report.
11. The Respondent testified that he made personal requests and requests through correspondence to many individuals and groups asking them for their support and asking them to urge others to support his candidacy.



12. The Respondent testified that he approached Slater Swartwood, a friend or acquaintance, and asked for his support in his city council race.
13. The Form C/OH identifies Mr. Swartwood as an executive vice president of Force Multiplier Solutions, Inc.
14. The Respondent testified that the request to Mr. Swartwood was essentially the same as other requests that the Respondent made to many persons.
15. The Respondent testified that he reported contributions he knew were bundled on Schedule ATX 5 as bundled contributions.
16. The Respondent testified that the contributions from the 17 individuals who appear to be associated with Force Multiplier Solutions, Inc. were received electronically on various dates, and were not delivered by a single individual. The Respondent testified that after the Complaint was filed, the Respondent checked with Mr. Swartwood and learned that the contributions were transmitted directly from the various contributors, and therefore that the contributions had never been in Mr. Swartwood's possession.

C. Findings Relevant to Count II

1. Respondent's October 6 Form C/OH disclosed a contribution from John Kirk Mitchell in the amount of \$350.
2. Respondent's October 6 Form C/OH did not disclose the occupation or employer for Mr. Mitchell.



3. The Respondent testified that he had received more than 500 contributions over the course of the campaign, and his October 6 Form C/OH reflects contributions of \$200 or more from approximately 98 individuals whose occupation and employer are shown.
4. Mr. Mitchell appears to be the only individual who contributed \$200 or more whose occupation and employer are not shown.
5. Complainant alleges that Respondent violated the Austin City Code by submitting the October 6, 2014 Form C/OH without disclosing the required information on the occupation and employer of a contributor who contributed \$200 or more to Respondent.
6. Although the Complainant alleged facts that if true, could constitute a violation of Section 2-2-21(A), the Complaint did not refer to that section of the Code as required by Section 2-7-41(B).
7. At the preliminary hearing, the Complainant amended the Complaint to indicate that the provision of the Code alleged to have been violated is Section 2-2-21(A) and filed the amended complaint with the City Clerk.
8. The Respondent waived any objection to the amendment.
9. At the October 20, 2014 hearing, Respondent stated that omission of the employer/occupation information was an unintentional error.
10. The Respondent stated that he did not intend to hide Mr. Mitchell's identity or occupation.



11. The omission of the employer and occupation information of this single contributor was clearly unintentional.

III. CONCLUSIONS OF LAW

A. General Conclusions of Law

1. The October 20 Meeting of the Commission and Preliminary Hearing are properly noticed in accordance with Chapter 2-7 of the City Code, the Ethics and Financial Disclosure Ordinance (“Chapter 2-7”), and the Texas Open Meetings Act.
2. The Commission has jurisdiction over the Complaint pursuant to Section 2-7-26, Austin City Code, which provides that the Commission has jurisdiction over City Code Chapter 2-2 (*Campaign Finance*). The Commission has jurisdiction over the Respondent pursuant to Section 2-7-41, Austin City Code, which provides that the Commission shall consider possible violations by candidates for election to City offices.
3. Complainant and Respondent were each afforded an opportunity to appear at the Preliminary Hearing in accordance with Chapter 2-7, and each presented testimony.
4. Under Section 2-7-44, at a preliminary hearing, the Commission may dismiss a complaint if it does not allege conduct that would be a violation of a provision within the jurisdiction of the Commission. The Commission may also decide whether a final hearing on the Complaint should be held.



5. In a preliminary hearing at which the Respondent agrees that a violation has occurred, the Commission may move directly to determinations that would otherwise be made during a Final Hearing conducted pursuant to Section 2-7-45 of the City Code, and may consider the appropriate sanction or prosecution pursuant to Section 2-7-47, Section 2-7-48, and/or Section 2-7-49 of the City Code.
6. When the complaint before the Commission alleges a violation of the Fair Campaign Chapter, the Commission's potential sanctions and other actions are set out in Section 2-7-49 of the City Code ("Section 2-7-49").
7. Under Section 2-7-49, if the Commission determines that a violation of the Fair Campaign Chapter has occurred, the Commission may recommend that the City Attorney prosecute the violation, may request the appointment of a special prosecutor, or, if the Commission determines that the violation is minor, clerical, or may have been unintentional, may recommend that the violation not be prosecuted or be prosecuted only if the violation is not corrected.
8. Under Section 2-7-49, the Commission is not required to make a recommendation with respect to a complaint.



9. Under Section 2-7-49, the Commission may also draft and publish a letter of notification, a letter of admonition, a reprimand, or a letter of censure to a respondent found to have violated a provision subject to Section 2-7-49. The provisions of Chapter 2-7 addressing the criteria for these remedies are set out at Section 2-7-48 of the City Code.

B. Conclusions of Law Relevant to Count I

1. Under Section 2-7-44 of the City Code, the issue to be considered by the Commission at this preliminary hearing is the existence of reasonable grounds to believe that a violation of Section 2-2-22 has occurred.
2. Bundled contributions received during a reporting period must be reported on Schedule ATX 5.
3. Bundling is defined as the soliciting and obtaining, during a campaign period, contributions on behalf of a candidate of \$200 or more per person from five or more persons.
4. Section 2-2-22 does not directly address whether the bundled contributions must be provided to the candidate or the candidate's representative by the bundler; however, the section suggests this is the case. Section 2-2-22(C) provides that "A bundler shall provide to each candidate, *at the time the bundler delivers bundled contributions to the candidate*, the information necessary for the candidate to report the information required by this section." Section 2-2-22(C) (emphasis added). While the next sentence indicates that the failure of the bundler to



provide the information does not excuse the candidate's failure to report, the sentence suggests that the act of bundling requires notice to the candidate that the contributions are bundled.

5. Although not controlling, federal law relating to bundling requires knowledge by the candidate that the contribution is being forwarded to the campaign on behalf of a bundler. *See* 11 CFR 104.22(a)(6)(i); 74 Fed. Reg. 7292 (Feb. 17, 2009) (adoption and explanation of Federal Election Commission rules regarding bundling).
6. Even though the existence of multiple contributions from persons who appear to be connected may suggest bundling, in the absence of evidence that an individual solicited *and* obtained the contributions, a violation of Section 2-2-22 cannot be established.

C. Conclusions of Law Relevant to Count II

1. Under Section 2-7-44 of the City Code, the issue to be considered by the Commission at this preliminary hearing is the existence of reasonable grounds to believe that a violation of Section 2-2-21(A) has occurred.
2. Pursuant to Section 2-2-21(A), which is part of the Austin Fair Campaign Chapter ("The Fair Campaign Chapter"), a candidate in a City election must include on his or her contribution and expenditure reports the occupation and name of employer for all individual contributors of \$200 or more.
3. A candidate's knowing failure to include information that the Fair Campaign



Chapter requires to be included on a contribution and expenditure report is an offense under Section 2-2-5 of the City Code, subject to prosecution in the Municipal Court.

IV. DETERMINATIONS OF THE ETHICS REVIEW COMMISSION

A. Count I

1. The Commission determines that reasonable grounds do not exist to believe that a violation of Section 2-2-22 occurred as a result of Respondent's failure to report the 17 challenged contributors as bundled contributors.

B. Count II

1. The Commission determines that reasonable grounds exist to believe that a violation of Section 2-2-21(A) of the City Code occurred as a result of Respondent's failure to disclose employer and occupation information for a single contributor included in Respondent's October 6, 2014, C/OH form.
2. The Commission determines that a violation of Section 2-2-21(A) has occurred.
3. The Commission determines that the violation was clearly unintentional.

V. ACTIONS AND SANCTIONS BY THE ETHICS REVIEW COMMISSION

A. Count I

1. The portion of the complaint relating to the failure to report allegedly bundled contributions (*i.e.*, Count I) is DISMISSED due to the absence of reasonable



grounds to believe a violation has occurred.

B. Count II

1. The Commission recommends that the violation relating to the failure to list the occupation and employer of an individual who contributed more than \$200 (*i.e.*, Count II) not be prosecuted.
2. The Commission directs that a letter of notification issue.

ORDERED this 20th day of October, 2014.



Austin Kaplan
Chair, Ethics Review Commission

